IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 24194 of 2003(E)

PETITIONERS:
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1. K.J.MATHEW S/O. JOSEPH, KALLARAKKAL HOUSE, MUTTOM VILLAGE, THODUPUZHA TALUK.

2. DR.XAVIER MATHEW S/O. MATHEW, EDAKKATTU KUDIYIL HOUSE, RAMALLOOR, KOTHAMANGALAM TALUK.

3. JOSE K.MANI, S/O. MANI, KARINGOZHAKKAL HOUSE, LALAM VILLAGE, MEENACHIL TALUK.

BY ADV. SRI.S.V.BALAKRISHNA IYER(SR.)
SRI.HARISH R. MENON

RESPONDENTS:
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1. KERALA FINANCIAL CORPORATION, REPRESENTED BY ITS DISTRICT MANAGER, MALAPPURAM

2. KERALA STATE ELECRTRICITY BOARD, REPRESENTED BY ITS CHAIRMAN, THIRUVANANTHAPURAM

3. EXECUTIVE ENGINEER, K.S.E.BOARD, TIRUR

4. ASST. EXECUTIVE ENGINEER, K.S.E.BOARD, TIRURANGADI.

5. ASST. ENGINEER, K.S.E.BOARD, CHELARI.

6. K.V.JANARDHANAN, SCRAP MERCHANT, P.O.CHERUVAYOOR, CALICUY.

BY ADV. SRI.C.C.THOMAS, SC, K.S.E.B
SRI.V.B.UNNIRAJ, SC, KFC
SRI.P.SANTHALINGAM, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 24194/03)

PETITIONERS' EXTS.:

EXT.P1: TRUE COPY OF THE APPLICATION FOR AMENDMENT I.A.NO.219 OF 2003 IN O.S.NO.56 OF 1999.

EXT.P2: TRUE COPY OF THE COUNTER STATEMENT FILED BY RESPONDENT NO.1 IN I.A.NO.219 OF 2003 IN O.S.NO.56 OF 1999 OF THE MUNSIFF'S COURT, PARAPPANANGADI.

EXT.P3: TRUE COPY OF THE ORDER OF THE MUNSIFF OF PARAPPANANGADI IN I.A.NO.219 OF 2003 IN O.S.NO.56 OF 1999.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.24194 of 2003

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Dated: 22nd August, 2007

JUDGMENT

This Writ Petition is remaining defective on the reason that the petitioner has not remitted process for serving respondents with notice. But I find that K.F.C., the 1st respondent entered appearance before this court through its Standing Counsel Adv.V.B.Unniraj and respondents 2 to 5 are the functionaries of the K.S.E.B. represented by its Standing Counsel. The 6th respondent was absent even before the court below. Under these circumstances, the Writ Petition need not be treated as defective.

2. Heard both sides.

3. Impugned in this Writ Petition under Article 227 of the Constitution is Ext.P3 order by which the learned Munsiff dismissed an application for amendment of the suit. The suit as originally instituted was for a decree of mandatory injunction against the 1st defendant-K.F.C. to pay forthwith whatever amounts that are due from the K.S.E.B. in respect of arrears of electrical energy consumed by M/s.Asian Resistors (India) Pvt. Ltd. (which amount the K.F.C. is liable to pay on account of the reasons stated in the plaint). The suit was also for a direction to the K.S.E.B. to restore the electrical energy

supplied to the building in question. The amendment of the suit was for the purpose of incorporating a decree for money against the 1st defendant-1st respondent was sought for on the allegation that during the pendency of the suit a sum of Rs.43,561/- (in respect of which the first relief in the suit had already been made) was recovered from the petitioner-plaintiff. The learned Munsiff has under Ext.P3 dismissed the application accepting the argument that the amendment will change the character of the suit and noticing the contention that the claim for recovery of money will be barred by limitation. The learned Munsiff was obviously disturbed by the situation that the issues in the suit had already been formulated for trial way back on 16.1.2001. According to the learned Munsiff, no reason is stated by the petitioners as to why the proposed amendment is not sought for earlier. Ext.P1 copy of the amendment application is produced in this court. Ext.P1 will show that recovery was made on 10.2.2000. The learned Munsiff was certainly right in observing that the application was belated. But then on the considerations which should govern the exercise of the power under Order VI Rule 17, the application could have been allowed by the learned Munsiff by putting the petitioner on terms. Setting aside

Ext.P3, I allow Ext.P1 amendment application with effect from the day on which the amendment application was filed in court. In other words, the amendment application is being allowed only prospectively, subject to the condition that the petitioners pay a sum of Rs.1500/- by way of total cost which will be payable in equal shares of Rs.750/- to the K.F.C. and the K.S.E.B. If the amounts are not paid within three weeks from today, Ext.P3 will stand confirmed.

The Writ Petition is disposed of as above.

srd **PIUS C.KURIAKOSE, JUDGE**